

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

v.

No. 4:13CR00179-08-SWW

BURNETT SMITH

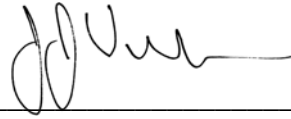
ORDER

Before the Court is Defendant's Motion For Reconsideration of Order of Detention. (Doc. No. 121.) A detention hearing may only be reopened "if the judicial officer finds that information exists that was not known to the movant at the time of the hearing," and that information "has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 3142(f). The matter should not be reopened if the evidence was available at the time of the initial hearing. *See United States v. Dillon*, 938 F.2d 1412, 1415 (1st Cir. 1991) (per curiam); *United States v. Hare*, 873 F.2d 796, 799 (5th Cir. 1989); *United States v. Flores*, 856 F. Supp. 1400, 1405–07 (E.D. Cal. 1994).

The Court finds that the proposed new information – Anthony Maltbia is now willing to serve as a third-party custodian – was, in fact, known and available to Mr. Smith at the time of his hearing. The Court also finds that his medical issues and the proposal of this third-party custodian do not bear materially on the issue of whether Mr. Smith poses a danger to the community. The Court found clear and convincing evidence that Mr. Smith posed a significant danger to the community if he was released. Such a finding under the Bail Reform Act precludes any form of conditional release, including release under the supervision of a third-party custodian. *See* 18 U.S.C. § 3142(e).

Therefore, the Motion is DENIED.

IT IS SO ORDERED this 25th day of November, 2013.

A handwritten signature in black ink, appearing to read 'Joe J. Volpe', is written above a horizontal line.

JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE